

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE COMMUNICATION

OPERATIONAL MEMO 111-7
REVISION 3

March 10, 1999

TO: All Waste Management Division Supervisors

FROM: Jim Sygo, Chief, Waste Management Division

SUBJECT: Part 111 Enforcement Procedures

I. Evaluation and Determination of Enforcement Response Violation

Waste Management Division (WMD) District and Hazardous Waste Program Section (HWPS) staff, in conjunction with their normal job responsibilities, shall continue to be responsible for the discovery of violations and for the initial enforcement response. In general, violations will be discovered through site inspections, file reviews, financial record reviews, permit application reviews, closure plan reviews, and other inspections or reviews. The initial enforcement response shall generally consist of a letter of warning or notice of deficiency and shall be signed by the appropriate District or HWPS staff.

Violations that are not resolved after the first or second letter of warning or deficiency (if allowed pursuant to the Resource Conservation and Recovery Act (RCRA) Enforcement Response Policy) shall be evaluated by District or HWPS staff for potential escalated enforcement action by the WMD Enforcement Section. Part 148, Environmental Audit Privilege and Immunity, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); the March 15, 1996 U.S. Environmental Protection Agency (U.S. EPA) Small Business Policy; the March 15, 1996 U.S. EPA RCRA Enforcement Response Policy; and other pertinent policies should be considered in the evaluation. If appropriate, the case shall be referred to the Enforcement Section for escalated enforcement. All referrals shall be in accordance with Section II (Referral Procedures and Information Required) of this Operational Memo.

If District or HWPS staff discover a violation which may be a Significant Non-Complier (SNC), the District and/or HWPS staff shall assemble the information required by Section II and shall consult with the Enforcement Section Chief (or other staff if the Chief is not available) within 14 days of discovery of the violation(s). The District should also notify the WMD Compliance and Enforcement (C&E) Program Manager by phone, electronic mail, or memo, of the potential SNC that has been identified. All staff involved (District, Permit, Geotechnical, etc.) shall be included in the discussion about whether or not the violation(s) constitute significant noncompliance and, therefore, warrant escalated enforcement. The final decision on whether the violator is an SNC shall be made jointly by the District/Unit Supervisor and the Enforcement Section Chief (evaluation date). The potential for handling the case pursuant to the Fast Track Order (FTO) process shall also be discussed (see Operational Memo 111-17). If the case is to be handled as an FTO, the procedures in Operational Memo 111-17 shall be followed.

If the violator is determined to be an SNC, the District/Unit shall refer the case to the Enforcement Section within 45 days of the discovery of the violation (evaluation date). The Enforcement Section Chief shall notify the U.S. EPA of the SNC during the next quarterly conference call and shall enter the SNC evaluation date into the Resource Conservation and Recovery Information System (RCRIS).

SNC, as defined in the 1996 Revisions to the federal Hazardous Waste Enforcement Response Policy, is a facility which has caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; is a chronic or recalcitrant violator; or deviates substantially from the terms of a permit, order, agreement, or from RCRA statutory or regulatory requirements

If a violator is determined to be an SNC, a monetary penalty for the violation is required by the U.S. EPA to be assessed; therefore, even if the violation has discontinued or has been corrected, the case must be referred for penalty assessment. Once a facility has been determined to be an SNC, it remains an SNC until a settlement order is entered and the violation(s) causing it to be an SNC is corrected.

II. Referral Procedures and Information Required

All referrals shall be signed by the District Supervisor or HWPS Chief, and sent to the Enforcement Section Chief, with a copy to the C&E Program Manager. FTO cases shall be handled pursuant to the procedures specified in Operational Memo 111-17. After any referral to the Enforcement Section, District or HWPS staff shall enter the referral in RCRIS using the 065 reason code. The referral memo shall include a completed referral report (blank copy attached). An electronic copy is located in the WMD shared directory and each District's subdirectory containing:

1. The facility information requested; items 1-5 on the referral report.
2. The violation information requested; items 6-15 on the referral report, which includes:
 - a. The date of inspection and/or record review and the date of discovery of the violation (evaluation date), if different from the inspection date. (The most likely case for different dates would be if the sampling/analysis results are required for a violation determination.) The date(s) of any Letters of Warning (LOW), and the applicable RCRIS and sequence codes for each violation/LOW identified.
 - b. A list of violations, including the specific citations for statutes, rules, and Code of Federal Regulations violations, as well as citations for violations of a permit, order, closure plan, or other enforceable document requirements.
 - c. A list of any compliance dates specified in a permit, order, closure plan, or rule which have been violated and any dates which may be violated in the future due to a failure to comply with the preceding deadline.
 - d. A description of which current violations have been cited in the past, and how many times.
 - e. A chronology of inspections and correspondence from the date of discovery of the violation, and any historical inspection reports,

correspondence, etc. which document repetitive or chronic violations.

- f. Violations of other statutes (describe the violations and identify the Department of Environmental Quality (DEQ) Division involved and whether they are pursuing escalated enforcement against the facility).
- g. Any other information requested in the referral report or deemed pertinent.

A file, including copies of all relevant information discussed in the referral memo, shall be sent with the referral memo. The C&E Program Manager, and other WMD or DEQ staff who have been involved in the case, should be copied on the referral memo. Once a case has been referred and until any settlement order is entered, the Enforcement Section shall be sent copies of all correspondence between the WMD and the facility. The Enforcement Section shall review, comment, and approve within seven working days of receipt of a draft, all correspondence from the WMD to the facility.

The Enforcement Section Chief will determine if the case is to be referred to the U.S. EPA. If so, Enforcement Section staff, with assistance from District staff, will prepare the additional information required to be included in the U.S. EPA referral package. If a case is referred to the U.S. EPA, the District staff person involved shall be responsible for working with the U.S. EPA on the case, with assistance from Enforcement Section staff, if necessary.

III. Enforcement Section Responsibilities (also see Operational Memo 111-17)

Once the Enforcement Section has received the referral, they shall:

- 1. Confirm receipt and assignment of the case with the referring party and enter the case into the case tracking system.
- 2. Discuss the case strategy with the referring staff and the Department of Attorney General (DAG), as appropriate, to determine a case strategy and management schedule with approval from the Enforcement Section Chief.

3. Conduct any further case preparation necessary, such as: order Dun and Bradstreet reports; conduct ability-to-pay analysis, if necessary; obtain case number for cost recovery tracking (refer to Operational Memo General-5); calculate the amount of any penalties to be sought; draft all administrative documents required to pursue the case; review the drafts with the WMD or other DEQ staff involved and the DAG; coordinate DEQ staff review necessary on judicial complaints, consent judgments, or other court documents; track all enforcement activity per Section procedures; and enter all enforcement activity data into RCRIS.
4. Copy the Division Chief, District Supervisor, C&E Program Manager, HWPS Chief, and other DEQ staff on all Notices of Violation, Consent Orders, and relevant judicial documents. Send copies of all Consent Orders or judicial settlements to the U.S. EPA and, if there is a penalty or cost payment included, a copy to the DEQ Budget Development Office. For any U.S. EPA reportable action taken, Enforcement Section staff will enter such data into RCRIS.
5. Inform the District Supervisor, C&E Program Manager, HWPS Permits Unit Supervisor, and other DEQ staff, as necessary, of any meetings or other communication with the facility and request their participation, as necessary.
6. Track compliance with the case management schedule and the U.S. EPA's March 15, 1996 Enforcement Response Policy, and report any anticipated problems meeting the scheduled timeframe to the Enforcement Section Chief and the District Supervisor involved.
7. Work with the WMD Office of Communications and Education liaison, the DEQ's Press Secretary, and/or the DAG's Press Secretary to have press releases done on all significant enforcement actions, such as entry of Administrative Orders, filing of judicial complaints, Consent Decrees, and/or Court Opinions.
8. Complete an order tracking sheet and cover memo for each settlement order entered.

IV. Settlement – Compliance Tracking

Once a case has been settled through entry of an administrative or judicial order, the assigned Enforcement Section staff will generate a compliance tracking form for tracking the compliance schedule in the order, as well as payment due dates or other important events. The compliance tracking form will be provided to the District/Program staff within 30 days of entry of the order or ten working days prior to the first scheduled compliance event, whichever occurs first. It will be the responsibility of designated District staff or HWPS staff to track scheduled compliance dates (except that Enforcement Section staff will track the payment of penalties and costs) using the tracking form created by the assigned Enforcement Section staff. The designated staff will be determined by who has the most dates or events to track, or is otherwise the appropriate person to track compliance for that facility. That person will become the Compliance Tracking Coordinator for that case. Any violations of the order discovered through inspections or review of submittals required pursuant to the order should be immediately brought to the attention of the Enforcement Section pursuant to the procedures for SNCs described in Section I.

V. Termination of Consent Orders

Upon written request from the facility, and confirmation by the District and HWPS staff that all compliance scheduled events have been completed, Enforcement Section staff shall execute a termination of the Consent Order. A copy of the termination shall be provided to the DAG and the District and/or HWPS staff involved.

Attachments

A handwritten signature in black ink, appearing to be "J. H. H. H.", is located in the lower right quadrant of the page. The signature is stylized and cursive.

**DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE MANAGEMENT DIVISION
PART 111 REFERRAL REPORT**

ENCLOSE A FILE CHRONOLOGY OF ALL PERTINENT FILE CORRESPONDENCE AND DOCUMENTS.

ENCLOSE A COPY OF THE FILE, INCLUDING COPIES OF ALL INFORMATION PERTINENT TO THE INFORMATION PROVIDED BELOW.

FACILITY INFORMATION

1. Facility Name and Location (enclose maps and diagrams of the facility pertinent to the violation, if available).

2. Regulated hazardous waste activity type(s).

3. Does the facility have interim status or a valid operating license or other authorization?
MID Number _____

4. Is an operating license application pending? _____ If so, describe the status of the application and any actions that need to be taken by the DEQ.

5. The names, business addresses, and telephone numbers of key facility personnel (facility operator, owner, etc.).

VIOLATIONS

6. Date of Inspection(s) _____
7. Date of Discovery of Violation(s) _____, if different from the inspection date
8. List violations, including specific citations of a permit, order, Part 111, or the Part 111 rules.
9. List any compliance dates specified in a permit, order, closure plan, or rule that have been violated and any dates that may be violated in the future due to a failure to comply with the preceding deadline.
10. List the current violations that have been cited in the past and the dates of the past citations.
11. Provide a chronology of inspections and correspondence from the date of discovery of the violation, and any historical inspection reports, correspondence, etc. that document repetitive or chronic violations.
12. Provide evidence, which documents the violation(s) (wastewater characterization information, inspection records, manifests, groundwater waste or soil samples, photographs, correspondence, etc.). If the violation involves groundwater analytical data, please complete the attached summary table, utilizing all available data.
13. Describe violations of other parts of the NREPA or other statutes (including Part 31, Part 115, Part 121, Part 147, Part 167, and Part 169 and identify DEQ divisions involved and whether they are pursuing escalated enforcement against the facility).

14. List all WMD or other DEQ staff who have been involved with the case and provide telephone numbers if known
15. List any other permits and describe their relevancy, if any, to the alleged violations.
16. Describe the nature of any actions the facility needs to complete to resolve the violations (e.g., compliance requirements, remedial investigation, assessment of penalty, etc.).
17. Any other information pertinent to the violation(s).

